

# SOUTHERN ENVIRONMENTAL LAW CENTER

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November 16, 2017

**VIA FOIAonline (foiaonline.regulations.gov) and U.S. MAIL**

Gayla Mendez  
Regional Freedom of Information Officer  
U.S. EPA, Region 4  
AFC Bldg., 61 Forsyth Street, S.W., 9th Flr. (4PM/IF)  
Atlanta, GA 30303-8960

**Re: Freedom of Information Act Request: Documents Related to TVA Bull Run  
NPDES Permit (TN0005410) 316 Demonstrations.**

Dear Ms. Mendez:

Under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center (SELC) requests the following documents:

1. All draft or final permits, reports, data, comments, and correspondence related to Clean Water Act § 316(a) and 316(b) compliance at the Tennessee Valley Authority's (TVA) Bull Run Fossil Plant over the period from its first National Pollutant Discharge Elimination System (NPDES) authorization in the mid-1970s to today.

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic: materials, communications, correspondence, emails, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the Environmental Protection Agency.

FOIA requires a responding agency to make a "determination" on any request within twenty (20) working days of receipt. *See* 5 U.S.C. § 552(a)(6)(A)(i). The statute favors disclosure of records and instructs the agency to withhold information only in narrowly defined circumstances in which the agency can articulate a reasonably foreseeable harm protected by an exemption. *See id.* at § 522(a)(8)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. *Id.* § 552(b). Should the EPA deny this request, the EPA must inform SELC of the grounds for denial and the specific administrative appeal rights which are available. *See id.* § 552(a)(6)(A)(i).

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be “liberally construed” in favor of waivers. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D. Colo. 1994); *Etlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the “roadblocks and technicalities which have been used by various Federal agencies to deny waivers.” *Pederson*, 847 F. Supp. at 855.

SELC is a 501(c)(3) non-profit organization with over thirty (30) years of experience disseminating public information regarding EPA regulatory and operations issues. *See* 5 U.S.C. § 552(a)(4)(A)(iii). SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved, including matters related to water pollution at TVA coal plants.<sup>1</sup> Lawyers at SELC are interviewed by or otherwise provide information to the media to explain their work related to water pollution at TVA coal plants and its significance.<sup>2</sup> SELC’s website contains documents generated by SELC for the specific purpose of educating the public on particular issues. SELC speaks at community meetings on particular topics, including water pollution at TVA coal plants. SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites.<sup>3</sup>

Both TVA and EPA are government actors, and the information requested by SELC is not already available in the public domain to our knowledge.

A fee waiver will benefit the general public through increased notice and understanding of the operations of the government and of potential or proposed major policy incentives. SELC further certifies that disclosure of the information sought is not in our commercial interest.

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<sup>1</sup> *See, e.g.* <https://www.southernenvironment.org/news-and-press/news-feed/administration-tells-power-plants-they-can-keep-polluting-water> (April 2017); <https://www.southernenvironment.org/news-and-press/news-feed/tva-refuses-to-disclose-water-quality-data-from-leaking-gallatin-coal-ash-s> (January 2017); <https://www.southernenvironment.org/news-and-press/news-feed/lawsuit-threatened-against-tva-for-known-violations-at-leaky-cumberland-fos> (January 2016).

<sup>2</sup> *See, e.g.*, [https://www.nytimes.com/2017/04/15/climate/tennessee-coal-ash-disposal-lawsuits.html?\\_r=0](https://www.nytimes.com/2017/04/15/climate/tennessee-coal-ash-disposal-lawsuits.html?_r=0) (April 15, 2017); <http://www.tennessean.com/story/opinion/2017/05/22/time-tva-state-regulators-step-up/101480930/> (May 22, 2017).

<sup>3</sup> *See, e.g.*, <https://www.southernenvironment.org/news-and-press/press-releases/drinking-water-supplies-for-over-2-million-people-in-tennessee-at-risk-unde>; [https://www.southernenvironment.org/uploads/words\\_docs/TVAServiceArea\\_and\\_CoalPlants\\_and\\_DWintakes\\_2016\\_0630\\_final.pdf](https://www.southernenvironment.org/uploads/words_docs/TVAServiceArea_and_CoalPlants_and_DWintakes_2016_0630_final.pdf).

Should SELC's request for reduced or waived fees be denied, SELC is prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request you contact me before processing this request if the fee is expected to be in excess of \$100.00. SELC reserves its right to appeal a fee waiver or reduction denial.

Because the volume of records responsive to our request may be large, we are willing to work with the EPA to minimize the work necessary to respond. We are available to review documents prior to any duplication and are willing to discuss other ways to facilitate your response to our FOIA request.

If you have any questions regarding this request, please feel free to contact me at (615)921-9470 or creichert@selctn.org. I appreciate your prompt attention to this matter and look forward to receiving the public records requested.

Sincerely,

A handwritten signature in blue ink, appearing to read 'CREICHERT', with a long horizontal flourish extending to the right.

Christina Reichert